

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re:	§	Chapter 11
	§	
AGE REFINING, INC.,	§	Case No. 10-50501-LMC
	§	
Debtor	§	
	§	

**JOINT APPLICATION TO APPROVE COMPROMISE AND SETTLEMENT
OF ADMINISTRATIVE CLAIM OF
ANDREWS TRANSPORT LP**

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE
TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21)
DAYS FROM
THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN
MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING
TO BE HELD.

TO THE HONORABLE LEIF M. CLARK,
UNITED STATES BANKRUPTCY JUDGE:

COME NOW Eric J. Moeller, the Chapter 11 Trustee (the “Trustee”) and
Andrews Transport LP (“Andrews” and together with the Trustee, the “Parties”) and file
their *Joint Application to Approve Compromise and Settlement* (the “Application”) and
would respectfully show the Court as follows:

Background

1. This is a core proceeding over which the Court has jurisdiction under 28
U.S.C. § 157(b). The statutory predicate for relief is Rule 9019 of the Federal Rules of
Bankruptcy Procedure.

2. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. On February 8, 2010, (the "Petition Date"), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.

4. On or about March 17, 2010, the United States Trustee appointed a Committee of Unsecured Creditors (the "Committee").

5. On or about June 16, 2010, the Court entered an agreed order authorizing the appointment of a Chapter 11 Trustee. On or about July 6, 2010, the Court entered an order appointing Eric J. Moeller as Chapter 11 Trustee.

6. On or about June 13, 2011, the Trustee filed a motion to set the bar date for administrative claims as August 1, 2011 [Docket No. 1020]. The Court signed an Order setting the bar date for filing administrative claims as August 1, 2011 [Docket No. 1041].

7. The Trustee has received a number of administrative expense claims. Andrews timely filed an administrative expense claim on July 25, 2011 in the amount of \$41,480.27 for environmental and safety support charges incurred from March 29, 2011 to April 18, 2011. See Claim Register, Claim #159-1.

8. The Parties have agreed to compromise and settle their dispute as follows: The Trustee and Andrews hereby stipulate and agree that Andrews shall be allowed an administrative claim in the aggregate amount of forty-one thousand dollars (\$41,000.00). Payment will be tendered from the estate to Andrews within five (5) days of entry of the Order approving the Application.

Relief Requested

9. The settlement is in the best interest of the estate and has been reached after arms-length negotiations among the Trustee and Andrews. In support thereof, the Parties would assert that the requisites for approval of a compromise and settlement as established by *Jackson Brewing Co. v. Herpel*, 624 F.2d 599, 602 (5th Cir. 1980) have been met.

10. The Court has discretionary authority to approve the compromise of a controversy pursuant to Fed. R. Bankr. P. 9019(a). See *Protective Comm. of Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968), on remand, *TMT Trailer Ferry, Inc. v. Kirkland*, 471 F.2d 10 (5th Cir. 1972); *Continental Airlines, Inc. v. Air Line Pilot's Ass'n Int'l. (In re Continental Airlines, Inc.)*, 907 F.2d 1500, 1508 (5th Cir. 1990). A debtor may compromise claims in the administration of the estate with the approval of the court, after notice and hearing. Fed. R. Bankr. P. 9019(a). Whether to approve a compromise is a matter within the sound discretion of the bankruptcy court. See *In re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984); *Am. Employers Ins. Co. v. King Res. Co.*, 556 F.2d 471 (10th Cir. 1977).

11. Courts have considered certain factors in determining the reasonableness of a settlement agreement. See *Protective Comm.*, 390 U.S. at 424-25; *In re Emerald Oil Co.*, 807 F.2d 1234 (5th Cir. 1987); *Jones v. Cage (In re W.J. Servs. Inc.)*, 140 B.R. 190, 191 (S.D. Tex. 1991). These factors seek to balance the risks and benefits associated with pursuing a potential claim against the costs associated with the proposed settlement and are as follows in this case:

a) The probability of success in litigation. Each of the Parties believes it would be successful in litigating the disputes between them.

b) The difficulty in collecting any judgment that may be obtained. This is a significant factor in this case. While the size of the estate is not completely known at this time, it is probable that administrative claimants will be paid some portion of the total claim.

c) The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attendant to it. The legal issues arising in the litigation are complex. Litigation of these issues would be costly and time consuming. The amounts in controversy do not support protracted and expensive litigation.

d) The interests of creditors and a proper deference to their reasonable views. A copy of this Application is being mailed to all interested parties entitled to receive notice. The Parties believe that this settlement is in the best interest of all creditors because it preserves assets for funding the Plan and payment of other administrative claims and creditors.

12. The underlying issues require the development of a substantial factual record and complicated legal issues. Litigating these issues would require a substantial investment of time and resources by the parties relative to the amounts in controversy. In these circumstances, litigating this matter is not a good use of the Parties' resources.

13. Finally, if an evidentiary hearing on the merits of all disputes were conducted, the Parties hereto will likely expend thousands of dollars in attorney's fees and costs, absent a settlement.

14. Given the likelihood of success on the merits and the risks and

inefficiencies of litigation, the proposed settlement is in the best interest of all parties; therefore, the proposed compromise and settlement should be approved as being in the best interest of the estate.

WHEREFORE, PREMISES CONSIDERED, the Parties respectfully pray the application to compromise and settle the matters as set forth above be approved; the Court enter an order finding that such settlement agreements are in the best interest of the estate and its creditors, and authorizing the Parties to execute all documents necessary to consummate the proposed compromise and settlement. Movants further pray for such other and further relief, at law or in equity, as is just and proper.

Dated: August 19, 2011.

Respectfully submitted,

<u>/s/ Allen M. DeBard</u> David S. Gragg – State Bar No. 08253300 Allen M. DeBard – State Bar No. 24065132 LANGLEY & BANACK, INC. 745 East Mulberry, Suite 900 San Antonio, TX 78212 (210) 736-6600 (210) 735-6889 (facsimile) COUNSEL FOR THE CHAPTER 11 TRUSTEE	<u>/s/ Jerry A. Gibson</u> Jerry A. Gibson – State Bar No. PLUNKETT & GIBSON, INC. 70 N.E. Loop 410, Suite 1100 San Antonio, TX 78216 (210) 734-7092 (210) 734-0379 (facsimile) COUNSEL FOR ANDREWS TRANSPORT LP
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by U.S. Mail, first class, postage pre-paid on the parties listed on the limited service list and/or by electronic means for all Pacer system participants on this 19th day of August, 2011.

/s/ Allen M. DeBard
Allen M. DeBard

of 9
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